

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7430

Petition of the Village of Johnson Water & Light )  
Department pursuant to 30 V.S.A. § 108(c) for )  
Approval to Finance upgrades to a Substation in )  
Johnson, Vermont )

Order entered: 8/14/2008

**I. INTRODUCTION**

On April 22, 2008, the Village of Johnson Water & Light Department ("Johnson" or "Company") filed a petition (the "Petition") with the Vermont Public Service Board ("Board") for approval pursuant to 30 V.S.A. § 108(c) to finance certain upgrades to an existing substation located at Johnson State College in Johnson, Vermont. The upgrades are intended to increase the substation's capacity to 12.47 kV and involve the replacement of an existing transformer, installation of a new oil containment system, expansion of the fence line, and the installation of a number of step-down transformers outside the fence line, plus a temporary substation transformer (the "Project").

The Project was previously approved by the Board pursuant to 30 V.S.A. § 248(j), on April 24, 2007, in Docket 7272, with an estimated cost of \$447,326. However, an updated cost estimate performed by Johnson revealed higher total costs of approximately \$592,302. At that time, Johnson neglected to inform the Board of the increase. As a result, Johnson is requesting approval for financing in the even amount of \$600,000.

On April 3, 2007, Johnson obtained voter approval for a bond issuance not to exceed \$600,000. On July 1, 2007, the Vermont Municipal Bond Bank issued Johnson a twenty-year, general obligation bond (the "Bond") in that amount, and closed the Bond on July 25 and 26, 2007. However, Johnson failed to obtain Board approval for the financing under 30 V.S.A. § 108(c). In recognition of that error, Johnson has submitted the subject Petition to the Board and will again seek voter approval as required under Section 108(c) once Board approval of the Petition is obtained. The Petition was supported by the prefiled testimony of Duncan Hastings, Johnson Town & Village Administrator, and by accompanying exhibits.

On May 15, 2008, the Vermont Department of Public Service ("DPS") submitted a letter to the Board stating that it believes that the intent of the Petition is consistent with the general good of the state, and is recommending approval of the Petition without a hearing.

On June 3, 2008, the DPS's Director for Regulated Planning sent a letter with attached Determination Under 30 V.S.A. § 202(f) to the Board recommending that the Board approve the Petition without hearing and finding that the issuance of long-term debt as set forth in the Petition is consistent with the Vermont Electric Plan pursuant to 30 V.S.A. § 202(f).

On July 3, 2008, the Clerk of the Board issued a memorandum informing Johnson that additional information regarding the bond application and issuance were needed before the Board could render its decision in this matter.

Johnson filed the additional information on August 4, 2008.

The parties have waived the opportunity for review of the Proposal for Decision, briefing, and oral argument, in accordance with 3 V.S.A. § 811.

I have reviewed the Petition, and the supporting documents. I conclude that approval of Johnson's Petition pursuant to 30 V.S.A. § 108(c) is appropriate and that such approval may occur without hearing. Based upon the evidence of record and the exhibits presented in this docket, and the DPS letters of May 15, and June 3, 2008, I hereby report the following findings and conclusion to the Board in accordance with 30 V.S.A. § 8.

## **II. FINDINGS**

1. Johnson is a company as defined by 30 V.S.A. § 201 and as such is subject to the Board's jurisdiction pursuant to 30 V.S.A. § 108 and § 203. Petition at 1.

2. Johnson requests approval to issue a general obligation bond in the amount of \$600,000 to finance upgrades to its substation located at Johnson State College in Johnson, Vermont. Petition at 1, 2.

3. The Project involves upgrading the substation for 12.47 kV operation and will consist of replacing an existing transformer, installing a new oil containment system, expanding the fence line, and installing a number of step-down transformers plus installing a temporary substation transformer. The Board previously granted § 248 approval for the Project and issued Johnson a Certificate of Public Good ("CPG") on April 24, 2007, in Docket 7272. Petition at 1.

4. On April 3, 2007, just prior to the Board's approval in Docket 7272, Johnson obtained approval from the voters of the Village of Johnson to issue a bond in the amount of \$600,000. On July 1, 2007, Johnson erred by prematurely issuing the Bond without first obtaining Board approval under 30 V.S.A. § 108(c). Johnson recognized the error and is submitting this Petition requesting approval of the Bond pursuant to § 108(c). Johnson will seek re-approval from the voters of the Village of Johnson if approval of the Petition is granted by the Board. Hastings pf. at 2.

5. At the time of the Board's prior approval in Docket 7272, the cost of the Project was estimated to be \$447,326. An updated cost estimate places total project costs at \$592,302. Thus, Johnson's financing request was rounded to \$600,000. Remaining bond proceeds, if any, will be used for distribution system upgrades. Hastings pf. at 3.

6. The Vermont Municipal Bond Bank issued the Bond on July 1, 2007, for a term of twenty-years with an assumed interest rate of 4.509%. Johnson will make principal reductions on an annual basis and interest payments on a semi-annual basis. Hastings pf. at 3, 4; exh. Johnson-DH-1.

7. The projected impact of the financing on retail rates is estimated to be an increase of 2.29%; however, once the system voltage is increased to 7200 volts, the loss savings will lower the rate impact to 1.04%. Hastings pf. at 3; exhs. Johnson-DH-5, DH-6.

### **III. DISCUSSION & CONCLUSION**

Based upon the foregoing and the evidence in the record, I find that Johnson's Petition as described above will be consistent with the general good of the State. I therefore recommend that the Board approve the Petition and authorize the refinancing without hearing.

The parties have waived their rights to file exceptions and present arguments under 3 V.S.A. § 811. Therefore, the proposal for decision has not been served on the parties.

Dated at Montpelier, Vermont this 11<sup>th</sup> day of August, 2008.

s/Jay E. Dudley  
Jay E. Dudley  
Hearing Officer

---

#### **IV. BOARD DISCUSSION**

We accept and adopt the Hearing Officer's findings, recommendations, and conclusion, but with the following observations. Although we appreciate the fact that Johnson came forward to correct its earlier error of not obtaining prior approval for the financing as described in the current Petition, we have concerns regarding certain representations and omissions made by Johnson in its Petition.

First, Johnson points out that: "The proposed project cost as approved by the Board was \$447,326. Subsequent project estimates indicate higher total costs of approximately \$592,302."<sup>1</sup> Johnson goes on to state: "In order to complete the substation upgrades, Johnson sought voter approval for the issuance of a bond not to exceed \$600,000 to make the approved improvements to the substation, which the Village voters approved on April 3, 2007."<sup>2</sup>

Inasmuch as we approved Johnson's § 248(j) request in Docket 7272 on April 22, 2007, and given the fact that the Board was not made aware of the cost increase for the Project until the filing of the current Petition, the difference in dates between voter approval and our Order in Docket 7272 indicate that Johnson was aware of the significant cost increase at a time prior to our decision, but neglected to inform the Board of this material change. Under Board Rule 5.409, a utility is required to inform the Board when the estimated capital costs of a Section 248 project increase by 20 percent (unless the increase is less than \$25,000). It appears that Johnson failed to comply with this requirement.

Secondly, by virtue of Johnson's supplemental filing in Docket 7272, dated April 21, 2008, we are aware that construction of the Project is now substantially underway,<sup>3</sup> however, the current Petition itself does not disclose or confirm that fact. In addition, upon our review of Johnson's supplemental filing of August 4, 2008, it is clear that the Bond was closed and funded on or about July 26, 2007. Based upon these facts, we are left to conclude that the bond proceeds were disbursed prior to Board approval under § 108(c). A more appropriate course of action for

---

1. Petition at 1.

2. Petition at 2.

3. See Docket 7272, Johnson's Petition for Amendment dated April 21, 2008, Exhibit Johnson - DH - 6(a) and Exhibit Johnson - DH -6d

Johnson, upon realizing its error, would have been to suspend the bond issue until proper approval from the Board had been received.

In order for the Board to properly perform its function, it must often rely upon representations made by the petitioner. We thus are troubled by Johnson's apparent disregard for statutory and regulatory requirements. While we have approved this petition without imposing sanctions, we will be mindful of this docket if a similar situation with Johnson occurs in the future.

#### **V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusion and recommendation of the Hearing Officer are adopted.
2. The request for financing as set forth in the Village of Johnson Water & Light Department's ("Johnson") Petition in this docket, and as described in the Findings, is consistent with the general good of the State of Vermont.
3. Pursuant to 30 V.S.A. § 108(c), consent is hereby given to Johnson to finance the project costs associated with upgrades to its substation located at Johnson State College, in an amount not to exceed \$600,000 in long-term debt financing through the Vermont Municipal Bond Bank, according to the terms and rate consistent with the Findings above.
4. This Order does not constitute approval of Johnson's capital structure or of any particular capital or operating expenditure that may be implemented with the proceeds from the issuance of long-term debt contemplated in the Petition in this docket. Nothing in this approval shall preclude the Vermont Department of Public Service ("DPS") or any other party, or the Vermont Public Service Board ("Board"), from reviewing or challenging such expenditures or Johnson's resulting capital structure.
5. Within 30 days of the date of this Order, Johnson shall inform the Board of the steps it has taken to ensure that statutory and regulatory requirements for Board approval will be followed in the future.

Dated at Montpelier, Vermont, this 14<sup>th</sup> day of August, 2008.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: August 14, 2008

ATTEST: s/Susan M. Hudson  
CLERK OF THE BOARD

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*